

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**
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E.W.

Petitioner,

v.

DISTRICT OF COLUMBIA
DEPARTMENT ON DISABILITY
SERVICES, REHABILITATION
SERVICES ADMINISTRATION
Respondent.

Case No.: 2011-DDS-00013

FINAL ORDER

I. Summary of this Final Order

This Final Order grants Petitioner's request to compel Respondent, the Rehabilitation Services Administration of the District of Columbia Department on Disability Services ("Respondent" or "DDS/RSA" or "RSA"), to pay his tuition at American University ("AU") for the 2011-2012 school year. RSA cannot provide only tuition equal to the tuition of the University of the District of Columbia ("UDC") because it has not demonstrated that UDC is able to accommodate Petitioner's needs.

II. Procedural Background

On September 15, 2011, Petitioner E.W., through counsel, requested a hearing pursuant to 29 DCMR 146 and 149, concerning the amount of benefits RSA provides to him.

Consequently, on September 19, 2011, this administrative court issued a Notice of Hearing and Scheduling Order that scheduled a hearing for October 20, 2011. At Petitioner's request, the October 20, 2011 evidentiary hearing was continued to November 22, 2011.

Prior to the hearing, DDS filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted. In support of its Motion, DDS argued, just as it has at the evidentiary hearing's conclusion, that 29 DCMR 122.5 prohibits it from paying more than the UDC tuition because UDC has a graphic design program that would meet Petitioner's vocational goals. Petitioner, in opposition to the Motion and again at the evidentiary hearing's conclusion, argued that UDC does not offer the necessary and proper academic program for Petitioner to achieve his vocational goals, but that his present school, AU, does. Because it appeared that Petitioner might be able to prove a set of facts in support of his claim that would entitle him to relief, I denied RSA's Motion and scheduled an evidentiary hearing.

The evidentiary hearing was conducted on November 22, 2011, and December 19, 2011. R.C.W., Esq., appeared on behalf of Petitioner. Shakira Pleasant, Esq., Assistant Attorney General, appeared on behalf of RSA. At the conclusion of the evidentiary hearing, I granted the parties' request to file written closing arguments. With the agreement of the parties, I set a deadline of January 17, 2012, for submission of written closing arguments. Both parties filed written closing arguments.

Since then, Petitioner has filed a Motion for Compensation for Textbooks and Supplies Pursuant to the Individual Plan for Employment and a Motion for Attorney's Fees. The two motions will be decided later, in separate Orders.

Upon consideration of the testimony of the witnesses, my assessment of their credibility, the exhibits admitted into evidence, the parties' post-hearing written closing arguments, and the entire record in this matter, I hereby make the following Findings of Fact and Conclusions of Law.

III. Findings of Fact

Petitioner is a 22 year old high school graduate with an associate degree. He is currently enrolled as a sophomore in a four-year college program at AU. He has received special education services for most of his academic career. Petitioner's Exhibit ("PX") 101. His employment has been limited to two summer jobs.

As a young child, Petitioner was diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD"). He was identified as developmentally delayed. He experienced speech problems and received speech and language therapy. He was difficult to control due to his hyperactivity, at home and school. He was placed on Ritalin and other medications. Most recently, for the past two years, Petitioner has taken Vyvanese ER to manage his ADHD and is under the care of a psychiatrist, who monitors him on the ADHD medication. PX 100.

In his early education years, Petitioner attended Our Lady of Victory School ("OLV"). He was unhappy there and experienced difficulty with his school work. Private tutors from Kingsbury Day School ("Kingsbury") tutored him while he attended OLV. Kingsbury is a small, private school that specializes in teaching students with learning disabilities and ADHD, and offers tutoring services as well as a structured services day school for students. Even with the assistance of the Kingsbury tutors while attending OLV, Petitioner did not perform well there.

Before completing elementary school, Petitioner transferred to Kingsbury because he required more support services than OLV offered. Petitioner's classes were smaller, with 6 to 7 students. Petitioner learned to read with the help of special books while at Kingsbury. Petitioner attended Kingsbury through his high school graduation in 2007.

After graduating from Kingsbury, Petitioner attended Montgomery College ("MC"), which is a two-year community college. Petitioner reports that he experienced learning and social difficulties and generally felt uncomfortable at MC. While at MC, Petitioner did not have any accommodations other than extended time to complete tests and assignments and testing at a testing center. PX 101. He failed some classes there, but after approximately 3 years, graduated in May 2011, with an associate degree in General Studies.

After graduating from MC, Petitioner attended one class at UDC, during a 6-week summer semester, from May to June 2011. UDC offers a Bachelor of Arts in graphic arts. Petitioner admittedly did not apply to the graphic arts program at UDC. In the one class Petitioner attended at UDC, he experienced difficulty accessing assignments, class notes, and homework on "Blackboard", which is UDC's online resource for students. The difficulty arose due to an administrative error in the access information provided him by UDC. PX 127. Together with his mother, Petitioner complained to UDC about the access problem. Petitioner reports that he was unhappy and felt lost in class at UDC. Ultimately, Petitioner withdrew from UDC without completing the course. PX 127-128.

In July 2011, Petitioner was accepted at AU for the Fall of 2011. PX 101. AU is a private higher education institution located in the District of Columbia. Petitioner currently is enrolled in AU's four year liberal arts degree program, which offers a Bachelor of Arts with a

major in Graphic Design. Respondent's Exhibit ("RX") 204F. On this record, it is unclear whether Petitioner has been admitted formally for a major in Graphic Design at AU or is simply taking courses that are pre-requisites for admission to the major. RX 204F.

Upon entering AU, Petitioner provided documentation of his ADHD to AU and registered with AU's Academic Support Center. RX 204C. Petitioner reports that he participates in the AU structured program and uses other available support services and accommodations there. Petitioner reports that he is happy at AU and does not feel lost in classes. He attributes this to AU's formal support program for students with learning disabilities. The support program includes a technical specialist who works with him in Dragon and Kurzweil¹, a counselor who monitors his progress and medication regimen, a note taker, tutoring services, faculty and staff that are specially trained in learning disabilities and ADHD, and study skill workshops, all of which are available on campus.

Surrounding the time that Petitioner graduated from MC and applied to AU, he applied for vocational rehabilitation services through RSA. In May 2011, RSA issued a Certification of Eligibility to Petitioner, informing him that RSA had determined that he has "a physical or mental impairment which constitutes a substantial impediment to employment" and, therefore, eligible for vocational rehabilitation services based on its preliminary assessment. RX 200.

In order to develop an Individualized Plan for Employment (the "IPE") for Petitioner, RSA contracted for two studies, a vocational assessment and a psycho-educational assessment. The vocational assessment was conducted in July 2011, by Gerald Weston (the "Vocational Assessment"). The psycho-educational assessment was conducted in July 2011, by Gregory E.

¹ Dragon and Kurzweil are assistive technology tools that make content accessible to students with cognitive ability, but not the literacy skills.

Price, Ph.D., a clinical psychologist, through Interdynamics, Inc. (the “Psycho-Educational Assessment”).

The Vocational Assessment concluded that Petitioner has the ability to be a computer graphics designer. In the Vocational Assessment, Mr. Weston notes that Petitioner is easily distracted and must be redirected frequently. Mr. Weston states that Petitioner will require accommodations during his studies to become a graphic designer. Specifically, Petitioner will need step-by-step instructions along with demonstrations, both of which may need to be repeated several times before he understands the process. Among other things in the Vocational Assessment, Mr. Weston recommends “accommodations, assistive technology and support services that are offered by a college such as American University;” “appropriate assistive devices;” “classroom seating, extended time for tests and assignments and other necessary accommodations;” and, “close and regular monitoring of (his) adjustment to college.” PX 101.

Dr. Price, who conducted the Psycho-Educational Assessment, also concluded that Petitioner has the ability to be a computer graphics designer. PX 100, p. 11. The Psycho-Educational Assessment diagnosed him as having ADHD, predominately impulsive type, an anxiety disorder, as well as certain academic deficits and emotional problems. Dr. Price did not characterize Petitioner’s ADHD as significant or severe², but recommended academic and other supportive services to accommodate Petitioner’s ADHD and academic deficits. Specifically, Dr. Price recommended the services of a reading specialist and math tutor; monitoring and compliance of Petitioner’s medication regimen; social skills, stress management, and time

² Throughout the hearing, Petitioner’s counsel, who is also Petitioner’s father, characterized Petitioner’s disability as “severe.” There is no evidence in the Psycho-Educational Assessment, or otherwise, that supports this characterization. Further, RSA, in certifying Petitioner’s eligibility, determined that Petitioner has a disability, not a significant or most significant disability. RX 205.

management training; oral presentation of class material; extended time accommodations for in-class tests and homework; and, assisted technology. PX 100, pp. 11-12. Additionally, Dr. Price noted that Petitioner requires repetition of instruction with multiple opportunities to practice. PX 100. Dr. Price concluded that Petitioner's academic concerns would require assistance in his further education, and that AU would be able to provide the academic and supportive services he requires. PX 100, p. 10.

After reviewing the Psycho-Educational Assessment but before developing the proposed IPE, the RSA Counselor communicated to Petitioner that RSA would pay only the UDC tuition rate at AU because UDC offers a graphic design program. RX 203, line 1. The RSA Counselor referred Petitioner to "the Disability Office at American University" for any services and accommodations he might require. RX 203, line 2. The RSA Counselor made no mention of services that might be provided to Petitioner at UDC or elsewhere. Indeed, the RSA Counselor professed little knowledge of UDC or its Disability Resource Center other than written information from UDC's website read for the hearing.

Following his review of the vocational and psycho-educational assessments, Petitioner's vocational counselor at RSA, Jonathan Keefe (the "RSA Counselor"), developed a proposed IPE for Petitioner. The proposed IPE states that Petitioner's employment goal is to be a graphic designer, with a vocational objective of employment in the area of computers/graphic design. PX 135; RX 202. The RSA Counselor concluded that a bachelor's degree is required to achieve the employment goal based on research that shows 81% of people in the computer graphics field hold bachelor's degrees. RX 212.

The proposed IPE is on a template that contains six main components: Objective, Planned Achievement, Evaluation Criterion, Services and Vendor listings, Outcome, and Client comments. The proposed IPE contemplates Petitioner's attendance at AU. Under the Evaluation Criterion, it requires Petitioner's engagement with the disability resource office at AU for accommodations related to his disability and his engagement with counseling services through AU to address any mental health concerns. Under the Services and Vendors component, RSA is to provide counseling and guidance, job readiness, and referral to other agencies, and AU is listed as the college. PX 135.

Under the proposed IPE, RSA will pay Petitioner's AU tuition at the full time cost for UDC because UDC also offers a bachelor's degree in graphic design. RX 203. UDC's tuition per semester for a full-time undergraduate is \$3,499.96. RX 203. AU's tuition per academic year for a full-time undergraduate is \$37,554, plus fees. RX 204H. Petitioner did not sign the proposed IPE because it did not allow for full payment of AU's tuition. Because Petitioner did not sign the proposed IPE, RSA has not provided services to him.

UDC has a Disability Resource Center for students who have documented physical or mental disabilities that "substantially limit them in one or more of life's major activities." RX 211A. The Disability Resource Center also offers services to students with documented ADHD. RX 214. UDC's Disability Resource Center provides extensive information on the documentation guidelines and requirements for students with ADHD disorders. RX 214. UDC's Disability Resource Center expects a "significant degree of independence" of its students, but is available to assist "should the need arise." RX 211A, 214. Students with documented disabilities are allowed extended time on exams and note taking support. RX 214.

UDC's Academic Support Center offers peer tutors to its general student population. RX 215. UDC does not have an internship program for students with learning disabilities. RX 208.

According to RSA, it is not necessary for all services Petitioner requires to be a part of the university Petitioner attends. To the extent UDC does not offer the support services Petitioner needs, RSA can offer those services through various vendors in what it refers to as a "wrap plan." Vendor services under a "wrap plan" were not included in the proposed IPE, but testified to at the hearing. For example, Petitioner could obtain additional support with his reading through the Washington Literary Council ("WLC"). RX 211B. The WLC is an adult literacy program that serves adults with limited reading skills or pre-reading skills. It has a small staff and more than 180 volunteers that provide small group instruction and one-on-one tutoring. The majority of its students are parents or grandparents who never had access to appropriate education programs or were mislabeled in school and never given the opportunity to learn to read. RX 211B.

AU's offerings for its students with documented learning disabilities and ADHD are incorporated into a structured program. The Princeton Review lists AU's program as the only structured program for college students with learning disabilities or ADHD in the District of Columbia. PX 102. AU provides its students with a Guide to Disability Support for Students, Faculty and Staff. PX 103. AU provides an Academic Support Center, Disability Support Services, Specialized Services for Students with Learning Disabilities and ADHD, and a Counseling Center for its students. PX 103, 106 The Academic Support Center assigns students with ADHD a counselor, who is specialized in learning disabilities and assists them in requesting accommodations to ensure equal access. PX 105. The services provided by AU's Academic Support Center include assignment to an academic advisor educated in ADHD's impact on

academic performance; individual instruction in skill areas such as time management, textbook reading, note taking, and preparation for exams; study skills, effective reading, and time management workshops; peer tutors; writing lab by appointment; and, support and accommodations for students with ADHD, including extended time on tests, reduced-distraction environment for taking tests, use of computers for exams, note taker in lecture classes, use of a calculator, counseling on assistive technology and assistive technology. PX 104, 106-112. Additionally, a special math class is offered for students with a learning disability or ADHD that affects their math performance. RX 204C.

The AU academic program also appears to offer other features that the UDC program may not. The AU program offers paid internships in graphic designs. RX 203. AU students can earn academic credit for their internships. PX 115. AU offers job postings for graphic design positions. PX 125. AU also offers a Career Center, where students can explore careers, learn job internship search strategies, practice interviewing, and obtain assistance in developing their resume. PX 115, 118. AU reports that 56% of its undergraduates are employed on graduation. PX 126.

IV. Petitioner's challenge to the proposed IPE

On September 15, 2011 Petitioner E.W., through counsel, requested a hearing pursuant to 29 DCMR 146 and 149, concerning the amount of benefits RSA provides to him. Petitioner asserts that the IPE should allow for full payment of his AU tuition because UDC does not offer the necessary and proper academic program for Petitioner to achieve his vocational goals.

V. Conclusions of Law

A. Overview of the Rehabilitation Act

The Rehabilitation Act of 1973, as amended (the "Rehabilitation Act" or the "Act"), 29 USCS § 701 *et seq.*, provides federal grants to states to provide vocational rehabilitation to individuals with disabilities. *Buchanan v. Ives*, 793 F. Supp. 361, 363 (D. Me. 1991). The Act does not create an entitlement to any vocational rehabilitation service. 29 USCS § 722(a)(3)(B); 29 DCMR 103.6. And, state participation is voluntary. But, states that choose to participate must comply with federal regulations. *Id.* In the District of Columbia, RSA is the agency charged with implementing the Rehabilitation Act. *See* 34 CFR § 361.57(b)(2); D.C. Official Code § 32-331; Mayor's Order 2002-173, dated October 14, 2002; and 29 DCMR 100 - 199.

B. Overview of the Rehabilitation Act application process

Under the Rehabilitation Act, RSA conducts an assessment to determine eligibility for vocational rehabilitation services. The determination is to allow for rehabilitation services "in the most integrated setting possible, consistent with the individual's needs and informed choice." 29 USCS § 722(b)(3); 29 DCMR 103.1.

Initially, RSA determines whether an applicant is an individual with a disability under 29 USCS § 705(20)(A). An individual with a disability is one who has a physical or mental impairment, which impairment constitutes or results in a substantial impediment to employment, and who can benefit in terms of employment outcome from the provision of vocational rehabilitation services. 29 DCMR 103.2; 29 DCMR 199.1.

Then, a qualified vocational rehabilitation counselor employed by RSA is required to determine whether an applicant requires vocational rehabilitation services to prepare for and secure employment on considering, among other things, the applicant's strengths, resources, and informed choice. 29 DCMR 103.2(c).

Finally, once RSA has determined that an applicant is disabled and can benefit from and requires vocational rehabilitation services for employment, RSA must develop a written IPE. The IPE must include, among other things, specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided. 29 DCMR 110.5. Vocational rehabilitation services are "any goods or services necessary to render an individual with a disability employable." 29 USCS § 723(a); 34 CFR § 361.48. The services are to be provided in the most integrated setting that is appropriate for the service involved. 29 USCS § 722(b)(3).

The formulation of the IPE is a collaborative effort between the individual client and the RSA counselor. 34 CFR § 361.45(d)(3); 29 DCMR 110.5(c). The individual and the counselor equally participate in the formation of the IPE. *Buchanan*, 793 F. Supp. at 366; *Hedgepeth v. N.C. Div. of Servs. for the Blind*, 153 N.C. App. 652, 657 (N.C. Ct. App. 2002). This collaborative effort "gives eligible individuals the opportunity to exercise informed choice in selecting," among other things, the entity that will provide the vocational rehabilitation services. 29 DCMR 110.5(b)(3). In order to ensure joint participation, the IPE, upon its completion, must be agreed to and signed by both the eligible individual or his representative and the qualified vocational rehabilitation counselor. 34 CFR § 361.45(d)(3); 29 DCMR 110.5(c). Joint participation, however, does not mean giving eligible applicants final or exclusive decision making authority to determine their own goals. *See In re Tracy L. Murphy v. Office of*

Vocational and Educational Services for Individuals with Disabilities, 705 N.E. 2d 1180 (N.Y. 1998). And, RSA is free to factor in the cost of providing services within the prescribed procedural framework. *See Buchanan v. Ives*, 793 F. Supp. 361 (D.Me. 1991); *Zingher v. Dep't. of Aging & Disabilities*, 664 A.2d 256 (Vt. 1995).

C. The Rehabilitation Act application process here

The parties here agree that Petitioner has a disability and meets the criteria for participation in the RSA program. The parties also agree that Petitioner's attainment of a Bachelor of Arts degree in graphic arts is necessary to help him reach his employment goal and achieve competitive employment as envisioned by the Rehabilitation Act. RSA certified Petitioner as disabled³ and eligible for rehabilitation services in April 2011, based on his ADHD. RX 200. It is not whether or not Petitioner is disabled or that his attainment of a Bachelor of Arts is necessary to achieve his career goal that is in dispute, but the vocational rehabilitation services to be provided to Petitioner.

The cooperation and informed collaboration contemplated by the Rehabilitation Act in developing the IPE seemingly did not occur here. Whether fault for failure to cooperate and collaborate lies with Petitioner, RSA, or both is unclear. The failure may have been precipitated by RSA's view, expressed early on, that it need not consider providing Petitioner anything more than UDC's tuition amount because UDC offers the same graphic arts major. Or, Petitioner's unilateral decision to attend AU may have precipitated or exacerbated this failure.

³ RSA delineates three categories of eligible individuals: Category III - those with a disability, Category II - those with a significant disability, and Category I - those with a most significant disability. 29 DCMR 126; 29 DCMR 199. As certified by RSA, Petitioner has a disability that results in a substantial impediment to employment that falls into Category III, not a significant or most significant disability that limits functional capacities.

In any event, “collaborative effort” may have been implausible in view of RSA’s view that it need provide Petitioner only UDC’s tuition amount because UDC offers the same graphic arts major.

D. “Comparable services” as applied to tuition here

RSA has denied anything more than UDC’s tuition on grounds that UDC, a public institution, offers the same major as AU. RSA relies on 29 DCMR 122.5, which provides as follows:

If a public institution located in the Area offers an academic program necessary to achieve the consumer’s goal, but the consumer chooses to attend a private post-secondary institution (“private institution”) that is also located in the Area, the Rehabilitation Services Administration shall pay the published tuition rate of the University of the District of Columbia.

RSA does not assert that Petitioner must attend UDC. Nonetheless, the parties disagree as to whether Petitioner would be eligible for and accepted into UDC’s graphic arts program, based on his academic performance history. That, however, is irrelevant at this juncture. Petitioner chose AU where, as all acknowledge, he can meet his employment goal. Indeed, it is within Petitioner’s discretion to choose to attend a private university. It is, however, also appropriate for RSA to reimburse tuition rates only up to the cost of a public institution, which is expressly allowed under federal regulations in order to keep down rehabilitation costs. 29 USCS § 721(a)(8)(A)(i). However, RSA’s authority to limit tuition reimbursement does not allow it to effectively deny an individual necessary services. *See* 34 CFR § 361.50(b)(1).

Contrary to RSA's assertion, its determination to allow only the UDC tuition rate is not owed deference under the circumstances as presented in this case. Deference is not required to every position that an agency asserts in litigation. RSA's position here is not the result of a formal adjudicative hearing or public rulemaking on the specific issue here and, thereof, not owed deference based on those processes. *See United States v. Mead Corp.*, 513 U.S. 218 (2001); *Malloff v. District of Columbia Board of Election and Ethics*, 1 A.3d 383, 392-393 (D.C. 2010). The proceeding here is the formal adjudicative hearing required by law. RSA's application of its regulation to the facts of this case is eligible for deference only to the extent that its reasoning has the power to persuade.

RSA argues that Petitioner wishes to attend AU's Graphic Design program because it may be an academically superior program. That is not Petitioner's argument. Petitioner argues that the services provided by AU's structured program for learning disabled students are necessary for him in order to meet his vocational goal in graphic design.

On this record, the services provided by the two schools differ significantly. At first glance, UDC's Disability Resource Center appears to offer services only to students "who have a documented disability that substantially limits them in one or more of life's major activities." RX 211A. On further review, however, UDC's Disability Resource Center appears to offer services to students with documented ADHD, but the extent of those services is limited or, at least, unclear. RX 214. However, what UDC does not offer is a structured program for students with learning disabilities or ADHD. Instead, it relies on students to seek and manage any accommodations it offers. Nor would the "wrap services" that RSA proposed in the IPE provide a structured program. Further, on this record, there is little or no information with respect to any specialized training on learning disabilities or ADHD within UDC or the "wrap services."

In contrast, AU offers a formal, comprehensive program for students with learning disabilities and ADHD. AU's program includes intensive academic assistance, services and support. AU's structured program includes professional educators and staff trained in learning disabilities and ADHD, ongoing accommodations, professionally trained tutors, small classes, special classes in math, and training in self-advocacy for students with learning disabilities, all of which are built-in to the student's curriculum.

The most current and best evidence on this record demonstrates that Petitioner requires a structured program like AU's to meet his vocational goal. RSA's own vocational consultant opined in July 2011 that "Devin requires the accommodations, assistive technology and support services that are offered by a college such as American University." PX 101, p. 5. RSA's psychologist also endorsed AU's program as appropriate for Petitioner's needs. The AU program provides its services on campus, in an integrated setting.⁴ AU accepted Petitioner's documentation on his ADHD and registered him with its Academic Support Center. RX 204C.

It is appropriate for RSA to reimburse tuition only up to the cost of UDC, provided Petitioner is not effectively denied a necessary service. 29 DCMR 100, 110-113, 122.5; *see Wasser v. N.Y. State Office of Voc. & Educ. Servs. For Individuals with Disabilities*, 683 F. Supp. 2d 201 (E.D.N.Y. 2008), *affirmed Wasser v. N.Y. State Office of Voc. & Educ. Servs. For Individual with Disabilities*, 602 F. 3d 476 (2d Cir. N.Y. 2010). First, RSA must determine whether comparable services and benefits exist under any other program prior to providing any

⁴ "With respect to the provision of services, (an integrated setting) means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals who are providing services to those applicants or eligible individuals." 29 DCMR 199.1.

vocational rehabilitation services. 29 DCMR 114.2. Here, RSA determined that comparable services and benefits were available at UDC simply because UDC offers the same major as AU. Applying that interpretation, RSA concluded that it would not allow Petitioner full tuition at AU.

RSA's equation of "comparable services and benefits" to "same major," however, is a misinterpretation of the "comparable services and benefits" regulation. "Comparable services and benefits" are the actual services and benefits provided, in whole or in part, by Federal, State, or local public agencies, by health insurance or employee benefits. 29 DCMR 199. In other words, vocational rehabilitation services are "any goods or services necessary to render an individual with a disability employable." 29 USCS § 723 (a); *see also*, 34 CFR § 361.48.

RSA's failure to fully consider the services necessary to render Petitioner employable is reflected in the IPE template used by the RSA Counselor, as well as the IPE as it was presented to Petitioner. None of the components of RSA's IPE template are for needed vocational services, as required by 29 DCMR 110.5. The IPE template contains only a vendor listing section with respect to services. The proposed IPE does not specifically identify any vocational rehabilitation services that Petitioner needs, as required by 29 DCMR 110.5, but which were identified in both the Vocational and Psycho-Educational Assessments. 29 DCMR 110.5.

Petitioner has alleged and demonstrated that AU offers necessary supportive services that are not available to him at UDC. Therefore, RSA's reimbursement at the UDC tuition rate, in effect, denies Petitioner a necessary service. Accordingly, RSA's determination must be reversed.

RSA's very own determinations are the driving force behind this Order. RSA's determination and certification of Petitioner rendered the issue of disability moot ⁵. Whether Petitioner needs extensive support services to achieve his employment goal may have been questionable, but was answered by RSA's own experts and the IPE developed by the RSA counselor, all of whom agreed those services are necessary services for Petitioner. Finally, whether Petitioner requires a structured program like AU's to achieve his employment goal also may have been less than certain at first blush. But, here too, RSA's own experts and the void of evidence on those necessary services at UDC answered this uncertainty.

That said, this Final Order reverses RSA's determination with respect to Petitioner's application for services and benefits for the 2011-2012 school year. It does not order RSA to provide Petitioner benefits for Petitioner's full tenure at AU. The IPE must be reviewed at least annually. 34 CFR § 361.45(d)(5); 29 DCMR 110.5(e). The IPE may be amended, as necessary, if there are substantive changes in, among other things, the vocational rehabilitation services to be provided. 34 CFR § 361.45(d)(6). To amend the IPE, the individual client and the RSA counselor must work cooperatively. 34 CFR § 361.45(d)(6), 29 DCMR 110.5(f).

VI. Conclusion

For the reasons discussed above, this Final Order grants Petitioner's request to compel RSA to pay his full tuition to AU, subject, of course, to any conditions of income, contribution, and financial assistance application that may be applicable.

⁵ ADHD is variously and temporally, perhaps in part due to its state of remission as children pass from adolescence into adulthood, cast as a learning disability and learning difficulty. See Scott Lemond, David Mizgala, *Identifying and Accommodating the Learning-Disabled Lawyer*, 42 S. Tex. L. Rev. 69 (Winter 2000).

VII. Order

WHEREFORE, it is, this 16th day of February 2012:

ORDERED, that RSA's determination with respect to tuition rate for the 2011-2012 School Year is hereby **REVERSED**; and it is further

ORDERED, that RSA shall take action consistent with this Final Order; and it is further

ORDERED, that the parties shall inform this administrative court in writing if this Final Order and its implementation renders the pending Petitioner's Motion for Compensation for Textbooks and Supplies Pursuant to the Individual Plan for Employment moot; and it is further

ORDERED, that the reconsideration and appeal rights of any party aggrieved by this Final Order are stated below.

Dated: February 16, 2012

/s/
Elizabeth Figueroa
Administrative Law Judge

